

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: CORE SCIENTIFIC, INC., <i>et al.</i>, Debtors.¹	§ § § § § § § § §	Chapter 11 Case No. 22-90341 (DRJ) (Jointly Administered)
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**DECLARATION OF RUSSELL CANN IN SUPPORT OF DEBTOR'S OBJECTION TO
PROOFS OF CLAIM NOS. 358 AND 359 FILED BY SPHERE 3D CORP**

I, Russell Cann, pursuant to section 1746 of title 28 of the United States Code, hereby declare under penalty of perjury that the following is true to the best of my knowledge, information, and belief:

1. I am Head of Mining and Executive Vice President of Client Services at Core Scientific, Inc. (“**Core**”). I have served in this capacity, or similar, since February 2018. Prior to joining the Company, I grew and developed a blockchain and cryptocurrency mining business. I previously worked for Accenture in the areas of financial technology and risk management. I graduated cum laude from the South Carolina Honors College and the Moore School of Business.

1. I submit this Declaration in support of Core’s objection to Proofs of Claim Nos. 358 and 359 filed by Sphere 3D Corp. (“**Sphere**”).

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Core Scientific Mining LLC (6971); Core Scientific, Inc. (3837); Core Scientific Acquired Mining LLC (6074); Core Scientific Operating Company (5526); Radar Relay, Inc. (0496); Core Scientific Specialty Mining (Oklahoma) LLC (4327); American Property Acquisition, LLC (0825); Starboard Capital LLC (6677); RADAR LLC (5106); American Property Acquisitions I, LLC (9717); and American Property Acquisitions, VII, LLC (3198). The Debtors’ corporate headquarters and service address is 210 Barton Springs Road, Suite 300, Austin, Texas 78704.

2. I am familiar with the agreements that Core entered into with Gryphon Digital Mining, Inc. (“**Gryphon**”) and the relationship between the parties before and after the Debtors’ chapter 11 filings on December 21, 2022 (the “**Petition Date**”). The facts set forth in this declaration are based on my personal knowledge and experience, and my review of relevant documents and Core’s books and records that are created, maintained and used in the ordinary course of Core’s business.

3. On September 12, 2021, Core and Gryphon entered into a Master Services Agreement (the “**MSA**”) pursuant to which Core agreed to provide hosting and other services for Gryphon’s digital-asset-mining machines. Core and Gryphon also entered into two separate orders that would be governed by the MSA and specify, among other things, the volume and delivery schedule for miners that Gryphon will deliver to Core: Order #1 and Order #2 (together with the MSA, the “**Gryphon Hosting Agreements**”).

4. Order #1, which Core and Gryphon entered into on September 12, 2021, required Gryphon deliver to Core 100 S19j miners. This order for a small volume of miners was intended to allow Core to test its configurations and make necessary adjustments for the deployment of those miners in anticipation of a larger order of miners from Gryphon. On October 6, 2021, Gryphon delivered the 100 miners. Core performed the necessary tests, and the miners were deployed.

5. On October 5, 2021, Core and Gryphon entered into Order #2. Order #2 required that Gryphon deliver to Core 70,000 S19 (or equivalent) miners in accordance with the delivery dates contained therein. More specifically, Gryphon was obligated to make the following deliveries to Core: (i) 100 miners per month from October 2021 through February 2022; (ii) 2,500

miners in March 2022; (iii) 5,000 miners in April 2022; (iv) 7,500 miners in May 2022; (v) 10,000 miners per month from June through October 2022; and (vi) 4,500 miners in November 2022.

6. Core currently hosts 639 miners belonging to Gryphon pursuant to the Gryphon Hosting Agreements. Core received each of the miners from Gryphon. All invoices for fees related to hosting the miners have been billed to Gryphon, and Core's banking records reflect that Core received all wire payments for those invoices—totaling \$35,264,413.57 million—from Gryphon.

7. Core was aware that Gryphon and Sphere had signed an agreement to merge, but we learned in or around January 2022 that the merger was likely not going to occur. In fact, the merger never took place. In addition, although Core had agreed that Gryphon would be permitted to sub-license, sub-lease, delegate, or assign its rights to Sphere under Order #2, Core expressly conditioned that permission on Sphere satisfying Core's requirements prior thereto. These requirements would include, among other things: creditworthiness; Foreign Corrupt Practices Act considerations; Know Your Customer considerations (e.g. business with Chinese entities/Chinese government); form of assignment (e.g. how and which rights and obligations were to be transferred, allocated or retained); whether any such assignment would implicate securities laws or constitute an investment contract; and whether any assignment would impact Core's own rights and obligations under the Gryphon Hosting Agreements. I am not aware of Sphere ever satisfying, or attempting to satisfy, any such requirements.

8. Additionally, Core has never entered into, and is not a party to any, agreements with Sphere, and Core has never received any miners from Sphere.

9. Gryphon did not deliver any miners pursuant to Order #2 until February 8, 2022. At that time, Core received a large shipment of miners directly from the manufacturer,

which we later learned included, along with several hundred of Core's own mining machines, 297 Gryphon miners that were not marked as belonging to Gryphon. Core did not know that the February 8 shipment included Gryphon miners because Gryphon failed to notify Core in advance. On February 23, 2022, when Gryphon informed Core about the shipment of miners, Core initially believed that it had mistakenly deployed some of the miners as Core's self-miners. After investigating further, Core determined that it had *not* deployed (and therefore had not mined with) any of Gryphon's 297 miners but rather had stored them along with Core's own machines at Core's hub warehouse in Marble, North Carolina. Following this discovery, Core promptly deployed all 297 of the miners, and Gryphon received all coins mined from those machines.

10. Thereafter, Gryphon sent Core 95 miners on February 28, 2022, and then another 108 miners on March 7, 2022, all of which Core promptly deployed.

11. Because Gryphon was not delivering the required number of miner units in accordance with the schedule the parties agreed to in Order #2, Core utilized the hosting space previously set aside for Gryphon miners to host other miners. Core was at all times ready, willing and able to perform under Order #2 and had the capacity to deploy the miners under Order #2 if Gryphon had itself performed.

12. On April 4, 2022, Gryphon delivered 597 miners to Core and asked that they be immediately deployed. Core notified Gryphon that it would not deploy the miners immediately given that Core had already made other deployment arrangements because of Gryphon's failure to meet its requirements under Order #2, but could deploy Gryphon's miners a few weeks thereafter. Gryphon refused to wait and instead requested that Core return Gryphon's 597 miners. Core complied with Gryphon's request and returned all but 39 miners, which Core had already deployed.

13. Even though Gryphon had repeatedly failed to comply with the delivery schedule in Order #2, Core still attempted to work with Gryphon, and later also Sphere, to negotiate new contracts. As part of those negotiations, Core was prepared to (i) offer a direct colocation and hosting agreement to each company and (ii) credit the forfeited Gryphon prepayments against hosting fees that would be owed under the new hosting agreements. Further, Core deferred to Gryphon and Sphere regarding how such credit would be allocated between the new hosting agreements. However, the negotiations failed because both Gryphon and Sphere claimed they would agree to only the same terms—including the hosting rate—contained in Order #2. Core was not prepared to offer the same terms given that market conditions had substantially changed since the Gryphon Hosting Agreements were entered into and Gryphon failed to meet Order #2's schedule.

14. As an accommodation to Gryphon, Core continues to credit Gryphon's forfeited prepayments against Core's hosting fees for the 639 miners that Core currently hosts for Gryphon. The application of Gryphon's prepayments as a credit is reflected in monthly invoices that Core has sent to Gryphon, with copies sent to Sphere as requested by Gryphon.

Pursuant to 28 U.S.C § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Austin, Texas
Dated: May 9, 2023

/s/ Russell Cann

Russell Cann